

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 859 of 1984

to

FIRST APPEAL No 884 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PATEL NARANBHAI KODARBHAI

Versus

STATE OF GUJARAT

Appearance:

MR JITENDRA M PATEL for Petitioner

MR LR PUJARI, AGP for Respondent

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 03/10/97

ORAL JUDGEMENT

The appellants who are original claimants have filed this group of First Appeals under Section 54 of the

Land Acquisition Act, 1894, ("the Act" for short) read with Section 96 of the Code of Civil Procedure, challenging the common judgment and award dated July 30, 1983, passed by the learned Assistant Judge, Sabarkantha at Himatnagar, in a group of 26 Acquisition Cases comprising of Land Acquisition Case No. 12 of 1976 and other 25 Land Acquisition Cases. A comprehensive statement showing the details of Land Acquisition Cases, corresponding First Appeal numbers along with amount awarded by the Land Acquisition Officer and the Reference Court and the claim in First Appeal is tabulated as under :

Sr. No.	First Appeal No.	Reference by LAQ No.	Awarded by Reference Court	Awarded by Reference Court	Claim in First Appeal
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1.	859/84	12/76	11756.69	6950.00	14000.00
2.	860/84	14/76	7403.37	12863.00	12000.00
3.	861/84	16/76	2208.90	3011.00	8000.00
4.	862/84	18/76	2845.77	14736.00	12000.00
5.	863/84	24/76	5893.96	12355.00	8000.00
6.	864/84	27/76	2053.28	2400.00	8000.00
7.	865/84	29/76	13193.36	14428.00	10000.00
8.	866/84	31/76	9224.18	15198.00	14000.00
9.	867/76	35/76	1666.48	24713.00	8000.00
10.	868/84	37/76	9066.94	18897.00	10000.00
11.	869/84	39/76	7553.39	16202.00	14000.00
12.	870/84	40/76	4487.20	14530.00	4000.00
13.	871/84	41/76	7901.98	16160.00	10000.00
14.	872/84	43/76	10913.62	10774.00	14000.00
15.	873/83	46/76	9201.44	2088.00	12000.00

16.	874/84	47/76	6639.71	10988.00	10000.00
17.	875/84	48/76	7093.80	4403.00	12000.00
18.	876/84	49/76	7845.18	14338.00	8000.00
19.	877/84	53/76	6115.12	14789.00	8000.00
20.	878/84	55/76	1884.00	3995.00	8000.00
21.	879/84	56/76	18021.01	9937.00	10000.00
22.	880/84	58/76	5728.29	5044.00	4000.00
23.	881/84	61/76	11756.36	6670.00	9000.00
24.	882/84	65/76	8643.03	8973.00	10000.00
25.	883/84	67/76	7172.39	12890.00	12000.00
26.	884/84	71/76	13098.59	2422.00	12000.00

The learned Assistant Judge by the impugned judgment and award, awarded compensation for the acquired open lands at the rate of Rs.30 per sq.meter. The learned Assistant Judge divided the acquired houses in 2 categories namely houses which were built of cement and bricks and houses which were built of lime and bricks. The learned Assistant Judge awarded compensation of the houses which were built of bricks and cement at the rate of Rs.130/= per sq. meter and for the houses which were built of bricks and lime at the rate of Rs.100/= per sq. meter.

2. The Executive Engineer, Dharoi Rehabilitation and Canal Division, Himatnagar proposed acquisition of village site of Nakod which were coming under submergence due to construction of Sabarmati Reservoir vide his letter dated February 10, 1972. Due to the proposed acquisition, houses and open land of village Nakod, Tal. Idar were acquired by a notification under Section 4 (1) of the Act which came to be published in the Government Gazette on 14-9-1972 and erratum to the notification under Section 4 (1) of the Act came to be published in the gazette on 8-3-73. The notification under Section 6 of the Act was published in the Government gazette on 26-4-73. After issuing notice under Section 9 of the Act to the persons interested, the Special Land Acquisition Officer, Dharoi Project

Unit 2, Himatnagar, declared his award under Section 11 of the Act on 15-7-74. By the award, the Land Acquisition Officer fixed the market rate of new tenure land at Rs.1-80 per sq. meter whereas the market rate of Khunta Mapni lands was also fixed at Rs.1-80 per sq. meter. The Special Land Acquisition Officer fixed the market value of old tenure land at Rs.2/= per sq. meter. The compensation for the constructed portion of the houses was determined by the Land Acquisition Officer at Rs.90/= per square meter.

3. The claimants being dissatisfied with the award passed by the Special Land Acquisition, filed application under Section 18 of the Act before the Special Land Acquisition Officer to make reference to the District Court, Sabarkantha at Himatnagar. The said applications were numbered as Land Acquisition Cases as noted hereinabove. The land acquisition cases were consolidated and evidence was led by the claimants and the acquiring body in Land Acquisition Case No.37 of 1976. The claimants in support of their cases examined (i) Nathabhai Kodarbhai at Exh.18, (ii) Mankabhai Madhabhai at Exh.19, (iii) Naranbhai Punjabhai at Exh.20, (iv) Tejabhai Madhabhai at Exh.21, (v) Bejabhai Nathabhai at Exh.22, (vi) Ambaram Mohan, at Exh.24, and (vii) Bhagwandas Kantilal Desai, Consulting Engineer at Exh.31, in support of their claim. The claimants produced documentary evidence namely sale deed Exh.22 and Valuation Report of claimants' lands at Exh.33 to Exh.58. The opponent State of Gujarat did not examine any witness nor produce any documentary evidence before the Reference Court.

4. The Reference Court after appreciating the oral as well as documentary evidence led by the parties, divided the acquired houses into two categories namely (i) houses built of cement and bricks and (ii) houses built of lime and bricks. The Reference Court determined the compensation for the houses which were built of cement and bricks at the rate of Rs.130/= per square meter and at the rate of Rs.100/= per square meter for the houses built of lime and bricks. The Reference Court determined the compensation for the open land at the rate of Rs.30/= per square meter. The Reference Court after determining the compensation for the acquired houses and open land as stated above awarded solatium on the additional compensation at the rate of 15% together with interest at the rate of 4 1/2 % per annum which has given rise to the filing of group of these First Appeals by the original claimants.

5. Learned counsel for the appellants has argued that the Reference Court has erred in not awarding the compensation for the lands which were below the superstructure. Learned counsel for the appellants also argued that the Reference Court ought to have relied on the Valuation Reports of Consulting Engineer Mr. B.K.Desai. It is stressed that as per the Valuation Report Exh.33, there were first and second floors in many houses which were acquired. Learned counsel, therefore, submitted that the Reference Court has erred in not awarding the compensation for the first and second floor of the acquired houses. It is emphasized by the learned counsel for the appellants that as per the amended provisions of the Act, the claimants were entitled to solatium at the rate of 30 % and interest at the rate of 9 % per annum.

6. Learned Assistant Government Pleader Mr. L.R.Pujari has submitted that the appellants were not entitled to claim compensation for the lands which were below the acquired superstructures in view of the provisions of Section 3 of the Act. It is also submitted that the Valuation Reports of Consulting Engineer Mr. B.K.Desai were prepared after the houses were already submerged in the water of the reservoir. Learned A.G.P. has argued that the lands and building cannot be valued separately and it is to be assessed as one unit. It is further submitted by the learned A.G.P. that the claimants are not entitled to claim additional amount in the appeal, and, therefore, the same may be dismissed.

7. Claimants' witness Nathabhai Kodarbhai- Exh. 18 deposed about the facilities available to the village Nakod, which were formerly of Ex Jagirdar of Derol. As per his evidence village Marvada is at a distance of 1 kilometer from the Taluka headquarter of Khedbrahma which is at a distance of 5 kilometers and total population of village Nakod was about 810 persons. There were no facilities of electricity and water supply in the village and the village site was uneven and Village Nakod was connected by road to various towns of Sabarkantha District. He deposed that there were no medical facilities available in village Nakod. The evidence of witness Nathabhai shows that village Nakod was not developed and there were no facilities of electricity or water supply available to the inhabitants of the village.

8. Before discussing the arguments of learned counsel of both the sides, it would be appropriate to deal with the claim of First Appeal No.861 of 1984 which

arises from Land Acquisition Case No.16 of 1976. The appellant of First Appeal No.861 of 1984 has claimed compensation for 2 houses bearing No. 1/163 and 2/10. The award of Land Acquisition Officer shows that the claimant of Land Acquisition Case No.16/76 had got only one house bearing No.2/10 and this house came to be acquired by the acquiring body. However, the learned counsel for the appellants Mr. J.M.Patel submitted that the Reference Court erred in not awarding the compensation for the house bearing No.1/163 which was also acquired along with house No. 2/10. The submission of the learned counsel for the appellants is meritless, and, therefore, deserves to be rejected. The Reference Court has taken into consideration the fact that the claimant had only one house bearing No. 2/10. The claimant had not claimed compensation for the house bearing No.1/163 before the Land Acquisition Officer. A bare glance through the statement prepared by the Executive Engineer shows that the claimant of house No.1/163 had encroached on Government land and had illegally constructed the house. As the claimant of Land Acquisition Case No.16 of 1976 had not claimed compensation for the house No.1/163 before the Land Acquisition Officer, the said claimant had subsequently added in Reference before the Lower Court the house No.1/163 and had claimed compensation for the said house. Even in the Valuation Report Exh.58, house No.1/163 was added subsequently with ink. Therefore, it is abundantly clear that house No. 1/163 was subsequently added because it was illegally constructed by the claimant by encroaching on the Government land. The Reference Court in paragraph 18 of the impugned judgment and award has given cogent and convincing reasons for not awarding compensation for house No.1/163. Therefore, the finding of the Reference Court in not awarding compensation for house No. 1/163 is eminently just and proper and deserves to be upheld.

9. The submission of the learned counsel for the appellants that the claimants ought to have been awarded compensation for the lands which were below the acquired superstructures is meritless and deserves to be rejected. The Apex Court in catena of decisions has laid down the principle that in determining the compensation payable in respect of land with buildings, compensation cannot be determined by assessing the value of the land and the "break-up-value" of the buildings separately. The land and the building constitute one unit and the value of the entire unit must be determined with all its advantages and its potentialities (See A.I.R. 1968 Supreme Court, page 1201 The State of Kerala vs. P.P. Hassan Koya ;

A.I.R. 1988, Supreme Court, page 943 Administrator Genl. of West Bengal vs. Collector, Varanasi). In (1997) 2 S.C.C., page 161 Ratankumar Tandan and others v. The State of U.P., the Apex Court has ruled that when land and building are acquired by notification, the claimant is not entitled to separate valuation of the building and the land. They are entitled to compensation on either of the two methods, but not both. Learned Government pleader relying on the above decisions has urged that the Reference Court was justified in not separately valuing the lands and buildings. Learned counsel for the claimants could not dispute the settled legal position that in case of acquisition of superstructure only the value of superstructure has to be arrived at and the land below the superstructure cannot be separately valued. Therefore, in my opinion, the Reference Court has not erred in valuing the land and superstructure as one unit.

10. The submission of the learned counsel for the appellants that the Reference Court ought to have relied on the valuation Reports of Consulting Engineer Mr. B.K.Desai in determining the compensation of the acquired houses is also meritless and deserves to be rejected. The notification under Section 4(1) of the Act was published in the Government gazette on 10-9-72. The Consulting Engineer Mr. B.K.Desai (Exh.31) deposed that he had taken the measurement of the acquired houses in May 1976. The evidence of claimants' witness No.1 Nathabhai Kodarbhai shows that the Land Acquisition Officer had declared his award on 15-7-74 and that the claimants had handed over the possession of the acquired houses soon after the declaration of the award of Land Acquisition Officer. The witness deposed that as the acquired houses were submerged under the water of Dharoi Dam, they had left their houses. The evidence of witness Nathabhai Kodarbhai clearly shows that they had left their houses and handed over the possession of the acquired houses as the acquired houses were submerged under the water of Dharoi Dam. If the houses were already submerged under the water of Dharoi Dam when the Consulting Engineer Mr. B.K.Desai visited village Nakod in May 1976, the houses could not be in existence. Therefore, the Valuation Reports made by the Consulting Engineer produced at EXh.33 to 58 cannot be relied upon because they were prepared on the basis of the measurement which had taken by the Consulting Engineer in May 1976 by which date the houses were already submerged under the waters of Dharoi Dam. The Reference Court had rejected the valuation Report on the ground that the Consulting Engineer had taken depreciation value of the

houses at very low rate and had not taken into consideration the rates of building materials prevailing at the relevant time. The Reference Court had not considered the fact that when the Consulting Engineer visited the acquired houses, they were already submerged under the water of Dharoi Dam. Therefore, I am of the opinion that in determining compensation of the acquired houses, no reliance can be placed on the Valuation Reports of the acquired houses produced at Exh.33 to 58.

11. Where market value of a building constructed is to be assessed, one method to be adopted for the expenditure likely to be incurred for constructing similar house reduced by depreciation. The property in question should ordinarily be valued as a whole composite unit. In the present case, the claimants have lost their own homes and hearths. As no reliable evidence was led before the Reference Court, the Court was justified in resorting to guess work within permissible limit and determining the compensation for the acquired houses by dividing them into 2 categories and awarding compensation for the acquired houses of the two categories as stated above.

12. Submission of the learned counsel for the appellants that the Reference Court has erred in not awarding compensation for the first floor and second floor of the acquired houses also deserves to be rejected. No definite evidence was led by the claimants in support of their claim that there were first floor and second floor on the acquired houses. The Reference Court had relied on the statements prepared by P.W.D. at the time of acquisition of the houses. Claimant's witnesses have also admitted in their evidence that at the time of acquisition of the acquired houses, the acquiring body had permitted them to take away corrugated iron sheets, doors and windows of the houses. It should not be forgotten that because of the acquisition the claimants have to shift their residence to another village. The claimants must have built their new houses on the lands which were allotted to them by the State Government. The houses of the claimants were dearer as they were residing in those houses since many years. Therefore, the claimants should be adequately compensated for the loss of their houses which were submerged under the waters. From the oral evidence led by the claimants it is borne out that in some of the acquired houses, there were mezanine floors. The Reference Court has awarded to the claimants whose houses were constructed with bricks and cement at the rate of Rs.130/= per square meter and the houses which were built of bricks and lime were awarded

compensation at the rate of Rs.100/= per square meter. In my opinion, the compensation awarded to the claimants for their acquired houses is somewhat at a lower side. Bearing in mind the facts and circumstances of the case and the fact that the claimants had lost their homes and hearths, they should be adequately compensated. Therefore, I am of the opinion that the claimants should be awarded compensation at the rate of Rs.150/= per square meter for the houses which were built of bricks and cement and at the rate of Rs.120/= per square meter for the houses which were built of bricks and lime. Therefore, the award of the Reference Court requires to be modified to that extent. However, the compensation determined by the Reference Court at the rate of Rs.30/= per square meter for the open land is quite just and adequate, and, therefore, the finding of the Reference Court to that effect is confirmed.

13. The submission of the learned counsel for the appellants that the Reference Court has erred in not awarding solatium to the claimants at the rate of 30 % under Section 23 (2) of the Act deserves to be accepted. By virtue of the amended Act of 1984, the claimants are entitled to solatium at the rate of 30 % in view of the settled legal principles laid down by the Apex Court in the case of Municipal Committee, Bhatinda and others vs. Balwant Singh and others (1995), 5 SCC 433. The submission of the learned counsel for the appellants that the claimants are also entitled to interest at the rate of 9 % per annum for the first year and thereafter at the rate of 15% per annum also deserves to be accepted. In A.I.R. 1989, S.C.1933, Union of India vs. Raghbir Singh (dead) by Lrs. etc. the Apex Court has laid down the principle that the benefit of enhanced solatium is intended by Section 30 (2) of the Amended Act in respect of an award made by the Collector between 30th April, 1982 and 24th September, 1984 is extended to the cases of an award made by the Court between 30th April 1982 and 24th September 1984. In the present case though the award of the Land Acquisition Officer was declared on 15-7-74, the Reference Court has declared his award on 30th April 1983. Therefore, by virtue of transitory provisions from 30th April 1982 to 24th September 1984, the claimants would be entitled to claim interest as per the amended Section 28 of the Act.

14. As a result of foregoing discussions, the First Appeals filed by the claimants are partly allowed. The award of the Reference Court with regard to the determination of the compensation of the acquired houses is modified to the extent that the claimants are entitled

compensation at the rate of Rs.150/= per square meter for the acquired houses which were built of bricks and cement and at the rate of Rs.120/= per square meter for the houses which were built of bricks and lime. The compensation awarded by the Reference Court for the open land at the rate of Rs.30/= per square meter is confirmed. The award of the Reference Court is also modified to the extent that the claimants shall be entitled to solatium at the rate of 30 % and interest as per the amended provisions of Section 28 of the Act. However, it is clarified that the claimants shall not be entitled to interest on the amount of solatium as per the decision of the Apex Court in the case of Tehri Hydro Development Corporation vs. S.P.Singh, reported in (1997), Supreme Court Cases, 249. In the facts and circumstances of the case, there shall be no order as to costs.

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Mithabhai.